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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175892
Party	Plaintiff Microsoft Corporation Microsoft Corporation Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399 UNITED STATES
Correspondence Address	William O. Ferron, Jr. Seed IP Law Group PLLC 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES Billf.docketing@SeedIP.com, litcal@SeedIP.com
Submission	Other Motions/Papers
Filer's Name	William O. Ferron, Jr.
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Signature	/William O. Ferron, Jr./
Date	04/25/2007
Attachments	SP-DecIFerronOppToMOtToSuspend(.898).PDF ( 16 pages )(355601 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MICROSOFT CORPORATION,	)	
	)	
Opposer,	)	Opposition No. 91175892
	)	
v.	)	Serial No. 78/938513
	)	
MARK T. DANIEL,	)	
	)	
Applicant.	)	
<hr style="width:40%; margin-left:0"/>		Attorney Docket No. 664005.898

**DECLARATION OF WILLIAM O. FERRON, JR.  
IN OPPOSITION TO APPLICANT'S MOTION**

I, WILLIAM O. FERRON, JR., hereby declare and state that:

1. I am the attorney of Opposer Microsoft Corporation ("Microsoft") in the above captioned matter.
2. I am familiar with the trademark matters and business operations of Microsoft, and submit this Declaration on Microsoft's behalf.
3. Microsoft developed its ZUNE music player to compete with Apple's iPod music player. As early as May 2006, Microsoft selected the ZUNE name for its music player, and at least as early as July 11, 2006, Microsoft's selection of the ZUNE name was published and known to the consuming public through various media outlets such as internet blogs, discussion forums, and on-line magazines. Throughout the month of July 2006, the internet continued with chatter about Microsoft's new Zune player, producing multiple reports of the Zune name and Microsoft's use for a whole family of Zune products and services. Microsoft official public announced of the ZUNE name was in the July 21, 2007 issue of Billboard magazine. A sample

of the reporting about Microsoft's selection of ZUNE for its highly anticipated MP3 player is shown at the attached Exhibits A-D, as follows:

- a. Exhibit A is a July 11, 2006 posting on [www.namepros.com](http://www.namepros.com) (a domain name and website development discussion forum) entitled "Microsoft's iPod Killer is Officially Named Zune!"
- b. Exhibit B is a July 12, 2006 posting on [blog.iliumsoft.com](http://blog.iliumsoft.com) (a blog sponsored by Microsoft partner Ilium Software) entitled "A Good Name is Hard to Find!" *See* p. 5 of 7. The posting reports "the recent announcement of the Microsoft *Zune*." *Id.*
- c. Exhibit C is a July 17, 2006 article on [www.theglobeandmail.com](http://www.theglobeandmail.com) (an internet news magazine) reporting "Microsoft's announcement that it will release Zune, an MP3 player to go head-to-head with Apple's iPod .... The Zune MP3 player will come with a new on-line music service .... Moreover, there will be a whole family of products under the Zune name to come next year."
- d. Exhibit D is a July 21, 2006 posting on [zuneinsider.com](http://zuneinsider.com) (a blog sponsored by Microsoft) reporting Microsoft's official announcement of its ZUNE MP3 player in Billboard magazine.
- e. Exhibit E is a July 21, 2006 posting on [www.engadget.com](http://www.engadget.com) (a discussion forum for new technology) entitled "Microsoft confirms Zune project."

4. After adopting and publicly announcing selection of the ZUNE mark, Microsoft has continuously used the ZUNE mark in commerce to promote its ZUNE digital media player, accessories therefor and online music and video sales and services. For example, Microsoft operates ZUNE websites where music, videos and information on music, video and entertainment topics are available (*see, e.g.,* [www.zune.net](http://www.zune.net)).

5. Microsoft expects to sell 1 million ZUNE MP3 players by June of 2007, and to spend at least \$100 million promoting its ZUNE goods and services.

6. Applicant Mark T. Daniel filed trademark applications for the ZuneGear and ZuneSleeve marks (ser. nos. 78930482 and 78938513 respectively) after public announcements of Microsoft's ZUNE mark, after the consuming public had become aware of Microsoft's ZUNE products and services, and after the consuming public began associating the ZUNE mark and highly anticipated ZUNE MP3 player with Microsoft. Upon information and belief, Mr. Daniel is yet to use the ZuneGear and ZuneSleeve marks in commerce. Microsoft filed Notices of Opposition in the ZuneGear and ZuneSleeve applications, Opposition Nos. 91175893 and 91175892 respectively.

7. Microsoft filed initial discovery requests on April 12, 2007 in the present oppositions to the ZuneGear and ZuneSleeve applications. These outstanding discovery requests will confirm that Mr. Daniel filed the ZuneGear and ZuneSleeve applications with prior knowledge of Microsoft's ZUNE mark, seeking registration for complementary goods designed specifically for use with Microsoft's ZUNE digital music/MP3 player. For example, Microsoft served on Applicant the following requests for admissions ("RFA"):

RFA 2: Admit that Applicant was aware of Opposer's Zune Mark for portable music devices prior to selecting Applicant's [ZuneSleeve/ZuneGear] Mark.

RFA 3: Admit that Applicant was aware of Opposer's Zune Mark for portable music devices prior to filing of Applicant's Application in [July 26, 2006/July 16, 2006].

RFA 4: Admit that the "carrying cases for portable music players namely MP3 players" described in Applicant's Application are intended to be used with Opposer's Zune digital music players.

RFA 5: Admit that Applicant's [ZuneSleeve/ZuneGear] Mark is intended to refer to Opposer's Zune products and services, *i.e.*, gear for use with Zune products.

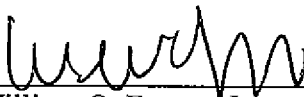
RFA 7: Admit that Applicant has received no authorization or license from Opposer to use, file trademark applications for, or claim ownership of or rights in the [ZuneSleeve/ZuneGear] Mark.

8. Upon information and belief, Mr. Daniel is admitted to the State Bar of Virginia.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

EXECUTED this 25<sup>th</sup> day of April, 2007 at Seattle, Washington.

SEED IP Law Group PLLC



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(206) 622-4900  
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Attorneys for Opposer  
MICROSOFT CORPORATION

945301\_1.DOC

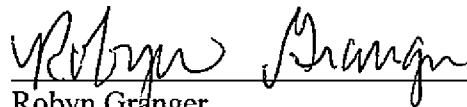
**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of April, 2007, the foregoing **DECLARATION OF WILLIAM O. FERRON, JR. IN OPPOSITION TO APPLICANT'S MOTION** was served upon Applicant by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Mark T. Daniel  
2316 York Road SW  
Roanoke, VA 24015-3906

and a copy to:

Patrick J. Stanzione, Esq.  
Stanzione & Kim, LLP  
919 18th Street N.W., Suite 440  
Washington, DC 20006

  
\_\_\_\_\_  
Robyn Granger

# **Exhibit A**

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**Microsoft's iPod Killer is Officially Named ZUNE!**

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Password:

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Page 1 of 22 [1](#) [2](#) [3](#) [4](#) [5](#) > [Last](#) »

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07-11-2006, 04:42 AM

#1

**slaughterbeck**  
Senior Member



Name: Kimmy  
Location: Lansing MI  
Trader Rating: (13)  
Join Date: Feb 2005  
Posts: 2,407  
NameBucks: 46.15 (Donate)



**IDEA Microsoft's iPod Killer is Officially Named ZUNE!**

Microsoft Argo's Final Name: The Zune?

Our inboxes are on fire with brand new information about the new Microsoft MP3 player. We thought the player was code-named "Argo", but we now got word that the final product name that's been flying around is the "Zune"!

Quote:

*The pic on the right seems to be the final design, which makes the player very clean—a definite departure from Microsoft's other endeavors. You all remember the video Microsoft's own people made to illustrate their packaging shortcomings? Well, it seems like they haven't learned much, as our tipster tells us the packaging itself is pretty ugly.*

*More info after the jump!*

*Our mole also says there's no game menu to be seen on the device, putting those rumors of portable gaming from Xbox branding in possible jeopardy. More game options possibly coming in the 2nd iteration.*

*There's also mention of a black version of the Zune, being shown on a music video for the band CSS, and the brown version on the cover for "Band of Horses". You can display Album covers for the song you're listening to on the screen, which is "big enough" and looks "pretty good". Paul Oakenfold also has a tie-in deal.*

*From the looks of things, the Zune will definitely be ready for a Xmas release.*

*We'll have more information plus possibly the logo and/or UI Shots tomorrow. Stay tuned! – Jason Chen*

*Thanks Tipster!*

Source: Gizmodo



## **Exhibit B**

Posted in [Software in General](#), [Tech Support and Customer Service](#) | [2 Comments](#) »  
[Trackback URL](#)

### **What is RSS? Here's a short answer.**

Monday, July 17th, 2006

One thing I've noticed in terms of support is that people usually come to us wanting to make lists (ListPro), keep track of passwords and such (eWallet), keep track of financial transactions (Keep Track), but when it comes to NewsBreak, it's a bit up in the air. It lets you... read news! Specifically, it's an RSS feed aggregator, and if you know what RSS is, you understand the concept immediately.

If you don't know what RSS is, wrapping your head around just what NewsBreak is good for, can do, can't do, etc. can be a little tricky. If you don't know what RSS is, this article will probably help: [A non-technical explanation of RSS](#).

Posted in [Software in General](#) | [No Comments](#) »  
[Trackback URL](#)

### **A Good Name is Hard to Find!**

Wednesday, July 12th, 2006

With the recent announcement of the Microsoft *Zune* I just felt a need to talk about naming products. I'll give Microsoft a little credit. It's really hard to name a product these days. Most of the good names are already taken by *something*. That leaves new products stuck with either made up names or names that squish two words together and pretend that it is one word (yes...we've done this too...I know).

Now, some of the made up names end up being quirky cool, like WOOT! and Google. Unfortunately, it seems that this has led big corporations to think that a wacky new word for their product name is the smart way to go.

([more...](#))

Posted in [General](#) | [6 Comments](#) »

## **Exhibit C**

Posted AT 12:05 PM EDT ON 17/07/06

## Jack Kapica's Cyberia archive May to July, 2006

JACK KAPICA  
GLOBE AND MAIL UPDATE

Microsoft's announcement that it will release Zune, an MP3 player to go head-to-head with Apple's iPod, is running into the usual flack from partisans, most of whom have denounced it because Microsoft does not innovate, just copy.

The Zune MP3 player will come with a new on-line music service that allows users to access it via the player's Wi-Fi connection. What's more, Zune is being designed without business partners, like so many of the company's previous digital media products.

Moreover, there will be a whole family of products under the Zune name to come next year, including an Xbox-like portable video game machine.


And brace yourselves: Zune will be accompanied by a PR blitz that promises to be as overwhelming as the half-billion-dollar Xbox 360 launch last year.

### Related to this article

#### Articles

- Jack Kapica's Blog archive, 2004
- Jack Kapica's Blog archive, January to June, 2005
- Jack Kapica's Blog archive, July to December, 2005
- Jack Kapica's blog archive, January to April, 2006

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#### Latest Comments

## **Exhibit D**

# Zune Insider Blog

## Music, culture, and the inside scoop from Cesar Menendez, a Microsoft employee working on Zune - Microsoft's new music project.

« [Support Your Local Indie Podcast: Three Imaginary Girls](#) | [Main](#) | [Canasta](#), Music Saves »

**July 21, 2006**

### Allow Me to (Re)Introduce Myself, My Name Is. . .

Hi there, I'm Cesar Menendez. Like my buddy Richard, I just started working on Microsoft's new music project, Zune.



Today, we're ~~admitting~~ officially announcing Zune, via an article in [Billboard](#). So what's Zune? It's Microsoft's new, holistic approach to music and entertainment. And yes, this year, we'll be releasing a device as part of the project. Under the Zune brand, we're looking to build a community for connecting with folks, all to discover new music and entertainment.

So, in part, that's where this blog comes in. Sure, I'll have the official word on Zune, but really, I want to make this blog about music, music culture, videos, cool bands, things like that. Ok, well, here goes.

Edit: RSS is back working real nice.

Posted on July 21, 2006 at 03:19 PM | [Permalink](#)

### TrackBack

TrackBack URL for this entry:

<http://www.typepad.com/t/trackback/5489346>

Listed below are links to weblogs that reference Allow Me to (Re)Introduce Myself, My Name Is. . . :

» [Cesar's moving to Zune from Gamerscore Blog](#)

Hi friends, wow, parting is such sweet sorrow. You may have noticed that I haven't posted to the blog... [\[Read More\]](#)

Tracked on July 21, 2006 at 01:19 PM

» [Zune](#) from faded515swg

Zune announced [\[Read More\]](#)

Tracked on July 21, 2006 at 02:30 PM

» [Microsoft officially announces Zune the portable music player.](#) from Darren Straight's Blog

Microsoft has now officially announced for the first time ever that they are working on a new portable media device

[http://zuneinsider.typepad.com/blog/2006/07/allow\\_me\\_to\\_rei.html](http://zuneinsider.typepad.com/blog/2006/07/allow_me_to_rei.html)

4/24/2007

called Zune. In an exclusive first interview with Billboard, Chris Stephenson, Microsoft's new GM of marketing for MSN Entertainment... [\[Read More\]](#)

Tracked on July 21, 2006 at 05:35 PM

» [Microsoft Zune Brand Confirmed](#) from Digital Tech News

After all the Zune media player rumors, Microsoft has confirmed plans to release their multimedia Zune device this year. More than a media player, Zune is also a brand that includes hardware and software products for music, movies, gaming and [\[Read More\]](#)

Tracked on July 23, 2006 at 06:16 PM

» [◆◇◆「Nintendo Ds Lite \(ノーブルピンク\)」とソフト\(お料理ナビ\)のセットが送料込18,539円!](#) from [一■毎日更新■一特価・激安情報満載【Live BB】](#)

ニンテンドーDS Lite (ノーブルピンク)+ソフト1本税込18,539円 [送料無料]・ニンテンドーDSのユニークで多彩な機能はそのままに、本体を薄型軽量化することで携帯性を一層高め、画面を更に明るくすることが可能な4段階の輝度調整機能を搭載した上位機..... [\[Read More\]](#)

Tracked on July 24, 2006 at 04:20 AM

» [Zune 잡감](#) from 김국현의 낭만 IT

마이크로소프트가 음악에 손을 댄다. 이름은 Zune. (Zune insider blog) 1. 준? june, 가만 있니? 변리사들 바빠질 듯. 2. iRiver 어떡하니? 마이크로소프트는 하드웨어는 잘만든다. 3. iPod와 iTunes가 70% 못넘는 나라들에 기대 만땅. 특히 한국. 사자가 없는 곳에 아가 호랑이가 왕. 앓싸..... [\[Read More\]](#)

Tracked on July 24, 2006 at 07:32 PM

» [ReginaBons](#) from ReginaBons

[ReginaBons](#) [\[Read More\]](#)

Tracked on August 17, 2006 at 07:02 AM

## Comments

sweet!

Posted by: [bryan](#) | July 21, 2006 at 12:50 PM

Great idea for a blog, I can tell it will have some personality to it, and nice touch on the logo Cesar.

Posted by: [zune scene](#) | July 21, 2006 at 12:52 PM

Sweet... a new MP3 player coming out soon. My just died so maybe I'll save up for the Zune... (sweet name IMO.)

Posted by: [superevilcube](#) | July 21, 2006 at 01:06 PM

I can't find an "E" on the logo.  
What does Zune mean anyway?

Posted by: [met](#) | July 21, 2006 at 01:08 PM

## **Exhibit E**



Autoblog invades the Big Apple for the 2007 New York Auto Show | Add to My AOL, MyYahoo, Google, Bloglines



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## Microsoft confirms Zune project

Posted Jul 21st 2006 3:20PM by Ryan Block

Filed under: Portable Audio, Portable Video

Well, it's not much, but we've got a quote and an official confirmation of the Zune project at Microsoft.

The Zune brand is being billed as a "music and entertainment" project aimed at "connecting with others to discover new music and entertainment and will deliver a family of hardware and software products." Here's what they sent over, by way of Microsoft's GM of marketing, Chris Stephenson:



"Today we confirmed a new music and entertainment project called Zune. Under the Zune brand, we will deliver a family of hardware and software products, the first of which will be available this year. We see a great opportunity to bring together technology and community to allow consumers to explore and discover music together."

We've got a lot of questions waiting to be answered (as we're sure you do too), and we'll post updates here as we find out more information from our peeps at Microsoft. In the mean time, keep yourself occupied with their official announcement in Billboard Magazine, as well as two new Zune blogs sprouted by people working on the project.

**Update:** Billboard confirms that "additional Zune-branded devices will follow, including a portable video player and, potentially, a portable game device," as well as an initial device offering WiFi and drive-based storage. The WiFi won't just be for moving around music files, as in the MusicGrenlin, however. Apparently other "seven or eight" wireless usage scenarios are envisioned, as suspected, and aims at providing "ubiquitous access to digital media from a wide range of Windows-powered devices in what ultimately aspires to be one part MySpace, one part iTunes and one part Xbox Live." Yikes. Zune will definitely be a general media player, though at launch music will be the "primary content," later also including video and "other types of media." More to come...

[Permalink](#) | [Email this](#) | [Comments \[53\]](#)

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The Wal-Mart \$299 HD DVD player on the way

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Xbox 360 Laptop mk2

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